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ABSTRACT

This document provides information on the current status of Wisconsin's laws relating to child support. It describes current law incorporating changes enacted in 1985 Wisconsin Act 29 which have already taken effect, several changes enacted by Act 29 which do not take effect until July 1, 1987, changes which will take effect upon passage of a budget act, and proposed administrative rules establishing a percentage-of-income standard for determining levels of child support. Part I concerns child support orders, examining the definition of support, support orders, receipt of support, maintenance and family support payments, and modification of support order. Part II concentrates on determining the amount of support, examining both current and new methods of determining support. Part III looks at payment of child support under current law and contains sections on general payment, income assignment, a pilot program for automatic withholding of support, and mandatory income withholding under new legislation. Part IV describes enforcement of support orders, discussing preventive measures, civil remedies, criminal sanctions, and the revised Uniform Reciprocal Enforcement of Support Act. (NB)

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WISCONSIN LEGISLATIVE COUNCIL STAFF

INFORMATION MEMORANDUM 86-22

Room 147 North
State Capitol
Madison, Wisconsin 53702

By: Susan Goodwin
Senior Analyst
December 8, 1986

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CHILD SUPPORT LAW IN WISCONSIN

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This Information Memorandum was prepared for the Special Committee on Employment Disincentives to provide information on the current status of Wisconsin's laws relating to child support. It describes current law incorporating changes enacted in 1985 Wisconsin Act 29 which have already taken effect; several changes enacted by Act 29 which do not take effect until July 1, 1987; or upon passage of the 1987-89 Biennial Budget Act; and proposed administrative rules establishing a percentage-of-income standard for determining levels of child support.

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PART I. CHILD SUPPORT ORDERS

A. Definition of "Support"

Under current Wisconsin law, both parents have an equal obligation to support their minor children. This obligation is explicitly contained in s. 49.90 (1m), Stats., which states that: "...{E}ach parent has an equal obligation to support his or her minor children as provided in this chapter and ch. 48."

The term "child support" is not specifically defined in the Wisconsin statutes. Section 767.25 (1), Stats., merely provides that a court may order either or both parents to pay an amount reasonable or necessary for support of a child and that the court shall specifically assign responsibility for and direct the manner of payment of the child's health care expenses. Section 767.25 (2) provides that, in order to protect and promote the best interests of the minor children, the court may set aside a portion of the child support award in a separate fund or trust for the support, education and welfare of such children.

B. Support Orders

A court is required to order payment of child support by either or both parents in the following circumstances:

1. Upon approval of a stipulation for child support;

2. Upon every judgment of annulment, divorce or legal separation;

3. In rendering a judgment in an action for child support, including a judgment under the Revised Uniform Reciprocal Enforcement of Support Act (RURESA);

4. In rendering a judgment in an action for periodic family support;

5. In an action to compel support by a spouse {s. 767.25 (1), Stats.}; or

6. Upon a judicial determination of paternity {s. 767.51, Stats.}.

In addition, child support may be ordered during the pendency of any action affecting the family, under s. 767.23 (1) (c). Finally, under s. 767.28, Stats., child support may be ordered even though a request for divorce or legal separation is denied.

C. Receipt of Support

A court is required to order either or both parties to pay for the support of any child of the parties who is less than 18 years of age or who is less than 19 years of age and is pursuing an accredited school program leading to a high school diploma or its equivalent {ss. 49.90 (1) (a) and 767.25 (1) and (4), Stats.}.

D. Maintenance and Family Support Payments

There are two other types of financial support which may be ordered as part of a proceeding for divorce, separation or annulment. One is a payment often ordered in conjunction with child support (maintenance payments to a spouse), the other payment is a substitute for it (family support).

1. Maintenance Payments

There are several differences between child support and maintenance payments. First, unlike child support, the courts do not have the statutory option to set a maintenance award based solely on the payer's income and assets. Instead, other factors delineated in s. 767.26, Stats., must be considered. Second, unlike child support payments (which are not taxable income to the recipient and not tax deductible to the payer), maintenance payments to a spouse are taxable to the recipient and are tax deductible to the payer. Third, once the decision has been made not to award maintenance payments to a spouse, the judgment cannot later be modified to permit maintenance payments.

However, as with child support, an order for maintenance payments entered on or after February 1, 1978 constitutes an assignment of income by operation of law, which may take effect immediately, at the discretion of the court or family court commissioner or after certain statutory requirements are met. Maintenance payments also will be subject to immediate income withholding upon enactment of the 1987-89 Biennial Budget, as described in Part III, D, of this Information Memorandum.

The procedures for requesting a modification in the maintenance award, if an award has been made, are the same as those described in Section E, below, for modifying a child support award.

2. Family Support

Section 767.261, Stats., provides that a court may make a financial order designated as "family support" as a substitute for either a child support order or a maintenance payment. The standards for determining the level of family support and the treatment for income tax purposes are the same as for child support.

E. Modification of Support Order

After a judgment has been entered providing for child support, maintenance payments or family support payments, either of the parties providing support, or any agency making AFDC or other payments to which support payments have been assigned, may petition the court, pursuant to s. 767.32 (1), Stats., to: (1) revise the amount of the child support, family support or maintenance payments; or (2) order the appropriation and payment of principal and income of property held in trust for any children. Revision or modification of a judgment which waives maintenance payments to a spouse is prohibited.

Section 767.32 (1) also provides that any request for modification in child support, because of an alleged change in circumstances, must take into consideration each parent's earning capacity and total economic circumstances. Receipt of AFDC payments or a substantial change in the cost of living of either party may be sufficient to justify a revision of the support order.

Section 767.33 (1) allows an annual adjustment in the child support payment to be paid, based on a change in the payer's earnings or in the cost of living, or both. Such adjustments may be made only once a year and may not be used when a child support payment is expressed as a percentage of income. Annual support adjustments tend to be used mainly in situations where, for example, the payer's income is subject to a union contract which will be adjusted at predictable intervals. Most child support modifications are accomplished as revisions of child support judgments under s. 767.32 (1).

PART II. DETERMINING THE AMOUNT OF SUPPORT

A. Current Methods of Determining Child Support

There are currently two alternative methods, discussed below, by which a court may determine the amount of child support to be awarded. Note that use of the percentage-of-income standard, described in Section A, 2, below, will become mandatory statewide, beginning July 1, 1987.

1. Statutory Factors and Department of Health and Social Services Guidelines

The first method currently available to judges, in determining the amount of support, requires the court to set an amount which is reasonable and necessary after considering statutory factors and guidelines established by the Department of Health and Social Services (DHSS) for the determination of child support awards.

The statutory factors are set forth in s. 767.25 (1m) (a) to (i):

(a) The financial resources of the child;

(b) The financial resources of both parents as determined under s. 767.255;

(c) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation;

(d) The desirability that the custodian remain in the home as a full-time parent;

(e) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home;

(f) The physical, mental and emotional health needs of the child, including the costs of health, insurance and uninsured health care for the child;

(g) The child's educational needs;

(h) The tax consequences to each party; and

(i) Any other factors which the court in each case determines are relevant.

The factors to be considered in setting child support, following a paternity determination, are the same as those set forth above, except that pars. (c) and (h) do not apply because they relate only to persons terminating a marital relationship, which does not usually exist in paternity cases.

In addition to considering the statutory factors delineated in s. 767.25 (1m) (a) to (i), the court is required to consider guidelines established by the DHSS for determining the amount of a child support obligation. The guidelines are set forth in a DHSS publication, entitled Child Support: Guidelines for the Determination of Child Support Obligations, dated February 1982.

The guidelines: (a) provide a formula for determining the basic child support allowance (called the "basic allowance"); and (b) set forth procedures for determining an appropriate division of additional financial resources (called "support above basic allowance" or "SABA") in families which have sufficient resources to provide the children with more than the basic monthly allowance. The basic monthly allowance and the SABA together make up the monthly child support obligation. The guidelines, as a whole, are often referred to as the "SABA guidelines."

2. Percentage-of-Income Standard

Section 767.25 (1p) provides that, in lieu of determining child support payments under s. 767.25 (1m) (which requires utilization of the statutory factors and the DHSS guidelines, described above), courts may order either or both parents to pay an amount of child support determined by using a percentage-of-income standard adopted by the DHSS. The effect

of using the percentage-of-income standard is to base the amount of child support on the parents' ability to pay. The law also permits a court to use the percentage-of-income standard in setting support following a paternity determination. Currently, courts may use the percentage-of-income standard, but are required to use it in all cases beginning July 1, 1987.

On December 20, 1983, the percentage-of-income standard was made available by DHSS to all judges and family court commissioners in Wisconsin and, as of that date, could be utilized in any new action for child support or family support, or in an action for modification of the support award.

The percentage-of-income standard was developed, in part, to simplify the process of calculating support, as well as to make child support awards more uniform. The standard establishes the cost of maintaining a child as an equivalent to the percentage of the family income and disposable assets that a parent shares with children in his or her custody. The method of calculating the paying parents' obligation is based solely on that percentage rate. At the time the standard was developed, the DHSS concluded that, based on available information, parents share their gross income with their children at a rate of at least:

--17% of the parents' income for one child.

--25% of the parents' income for two children.

--29% of the parents' income for three children.

--31% of the parents' income for four children.

--34% of the parents' income for five or more children.

Under the percentage-of-income standard, the first step in establishing a noncustodial (or "absent") parent's share of the financial burden of maintaining a child is to determine that parent's gross annual income and assets. Gross income can include 100% of wage and salary income, interest, dividends, net rental income, self-employment income and all other income, except public assistance. After gross annual income (including the value of any assets) is determined, the calculation of child support is accomplished by dividing the total annual income by 12 (if the order is monthly) or 52 (if the order is weekly) and then multiplying by the appropriate percentage based on the number of children to be supported. The court may refer to a schedule in order to set the child support award as a fixed amount or to a percentage table if the award is to be expressed as a percentage of income.

B. New Methods of Determining Child Support Under 1985 Wisconsin Act 29

1. Use of Percentage-of-Income Standard

Under 1985 Wisconsin Act 29, the use of the percentage-of-income standard by the courts will be mandatory, effective July 1, 1987. A court will not be permitted to use the current method described in Section A, 1, above, unless it determines that use of the percentage-of-income standard would be unfair to the child or any of the parties.

The court will be required to determine child support payments based on the percentage-of-income standard in the following actions:

a. Upon approval of a stipulation for child support;

b. Upon every judgment of annulment, divorce or legal separation;

c. In rendering a judgment in an action for child support, including a judgment under the RURESA;

d. In rendering a judgment in an action for periodic family support;

e. In an action to compel support by a spouse; and

f. Upon a judicial determination of paternity.

Any party to these actions may request that the court not use the percentage-of-income standard.

The statutory factors the court must consider, in determining whether use of the percentage-of-income standard would be unfair, are contained in s. 767.25 (1m) (a) to (i), Stats., effective July 1, 1987, and are listed below. Many of these factors are currently used by courts in determining child support under s. 767.25, Stats. The factors which are underscored were added by 1985 Wisconsin Act 29:

a. The financial resources of the child.

b. The financial resources of both parents.

c. The needs of each party in order to support himself or herself at a level equal to or greater than that established under federal poverty guidelines.

d. Maintenance received by either party.

e. The needs of any person, other than the child, whom either party is legally obligated to support.

f. The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation.

g. The desirability that the custodian remain in the home as a full-time parent.

h. The cost of day care if the custodian works outside of the home, or the value of custodial services performed by the custodian if the custodian remains in the home.

i. If joint custody is awarded, any physical custody arrangement ordered or decided upon.

j. Extraordinary travel expenses incurred in exercising visitation rights.

k. The physical, mental and emotional health needs of the child including the costs of health insurance and uninsured health care for the child.

l. The child's educational needs.

m. The tax consequences to each party.

n. The best interests of the child.

o. Any other factors which the court in each individual case determines are relevant.

If the court finds, by clear and convincing evidence, that application of the standard will be unfair to any party or the child, the court may modify the amount of support. In determining the amount of any modification, the court may consider the "SABA" guidelines established by the DHSS. The court must state, in writing or on the record, the reasons for the findings, the reasons for the amount of the modification and the basis for the modification.

2. Proposed Administrative Rules Relating to a Percentage-of-Income Standard

SECTION 3023 (7) of 1985 Wisconsin Act 29 required the DHSS to promulgate administrative rules, prior to January 1, 1987, that must include: (a) a definition of income which considers adjusted gross income for certain circumstances; (b) the percentages used to compute payments;

and (c) information on how to determine and allocate gross income and assets in cases in which support is paid to children in two or more families and in cases in which one or more of the parties is self-employed or is unemployed, but may be employed in the future.

On November 5, 1986, the DHSS submitted the proposed rule on the percentage-of-income standard for determining child support awards to the Legislature for review by the appropriate standing committees prior to the promulgation of the rules. The proposed rule, ch. HSS 80, Wis. Adm. Code: (a) establishes a definition of monthly income upon which a support obligation is based; (b) includes a percentage-of-income standard for computing support payments, based on the number of children to be supported; (c) provides a worksheet for calculating the child support obligation; and (d) establishes optional procedures for determining child support obligations in special cases, including shared-time payers, split custody payers and payers with obligations to support children in two or more families.

On November 25, 1986, the Assembly Committee on Children and Human Services and the Senate Committee on Judiciary and Consumer Affairs held a joint public hearing on proposed ch. HSS 80, Wis. Adm. Code.

As of this date, neither Committee has taken any further action on the rule. The time period for review of the proposed rule by both Committees expires on December 10, 1986. If neither Committee requests modifications to the rule prior to the end of that day, the DHSS may promulgate the rule as submitted. It does not appear that either legislative Committee will request modifications to the rule.

PART III. PAYMENT OF CHILD SUPPORT UNDER CURRENT LAW

A. General

Section 767.29 (1), Stats., provides that orders and judgments for temporary or permanent child support or maintenance payments shall be paid to the clerk of courts for the use of the person to whom the payment is awarded. If a person obtains an order for temporary maintenance payments or child support, the order is to be filed along with other necessary documents with the clerk of courts. The clerk then disburses the appropriate amount and keeps a record of the disbursal. The clerk's records relating to child support payments are open to inspection by the DHSS, for the purpose of administering child and spousal support, the parties and their attorneys and the family court commissioner.

Persons ordered to pay child support must pay interest at the rate of 1.5% per month on any amount unpaid, beginning the first day of the second month after the amount was due {s. 767.25 (6), Stats.}.

B. Income Assignment

For child support, family support and maintenance orders entered on or after February 1, 1978, and in all stipulations for child support entered into on or after July 2, 1983, those support orders constitute income assignments. Under the income assignment law, a child support order constitutes an assignment of all commissions, earnings, salaries, wages, pension benefits, worker's compensation and unemployment benefits and other money due or to be due in the future. An income assignment for child support has priority over any other assignment, garnishment or similar proceeding under state law. The income assignment is to the clerk of courts in the county where the action is filed, in an amount sufficient to meet the payments ordered and to defray arrearages in payments due at the time the assignment takes effect {s. 767.65 (1) and (3), Stats.}.

If a court orders an income assignment into effect, the court sends the employer of the person ordered to pay support a copy of the order by certified or registered mail. The employer is directed to withhold from the person's paycheck a specified amount of money which is to be sent to the clerk of courts for payment to the person who is owed support. The employer receives $1 for each court-ordered payment made, to be deducted from the amount the employe receives {s. 767.265 (3), Stats.}.

If the employer fails to submit the ordered amount after receipt of the order, he or she may be fined not more than $200. If an employer who receives an order fails to notify the clerk of courts that the employe has terminated employment within 10 days of the termination, the employer may be fined not more than $200. An employer may not use receipt of an income assignment as a basis for discharge or discipline of an employe or as a basis for denial of employment and may be fined not more than $200 for doing so {s. 768.265 (3), Stats.}.

Any person who is entitled to a payment of support or who is required to pay support, under an order entered prior to February 1, 1978, may apply to the court or family court commissioner for an income assignment. Upon receipt of the application, the court or family court commissioner is required to order an assignment which, at the court's discretion, either takes effect immediately or after the payer is notified of the arrearage and has an opportunity for a hearing on whether the income assignment should take effect. Unless the court orders otherwise, the income assignment does not become effective until: (1) payments are delinquent by at least 10 days; (2) the court on its own motion or the payee asks for

the assignment to become effective; and (3) an opportunity for a further hearing is provided the payer [s. 767.265 (1) and (2), Stats.].

C. Pilot Program for Automatic Withholding of Support

Section 767.395 (5), Stats., as created by 1983 Wisconsin Act 27, established a pilot program under which the DHSS was authorized to enter into agreements with up to 10 counties to require the use of immediately effective wage assignments for child support obligations. The DHSS entered into written agreements with the following 10 counties: Clark, Dane, Dunn, Kewaunee, Monroe, Oneida, Ozaukee, Richland, Sheboygan and Winnebago.

The pilot program will be in effect only until June 30, 1987, or the effective date of the 1987-89 Biennial Budget Act, whichever is later. At that time, income withholding of child support payments, which is described in Section D, below, will become mandatory statewide. Under the pilot program, the DHSS was directed to study whether there was a relationship between immediately effective income withholding and increased collection of child support obligations. The DHSS submitted the required report to the Legislature on June 23, 1986, on the cost-effectiveness and efficiency of using this system in the pilot counties.

In the 10 pilot counties, the immediately effective income withholding is being used in all actions involving child or family support before family court commissioners and circuit court judges. The income withholding applies to all temporary orders, revisions of judgments and final judgments, including both stipulated and contested cases, unless the payer establishes that irreparable harm is likely to occur.

1985 Wisconsin Act 29 modified the pilot project by removing the limitation on the number of counties that the DHSS could include in the pilot project. As a result, the DHSS contracted with an additional 25 counties to participate in the pilot project.

The University of Wisconsin's Institute for Research on Poverty is currently under contract with the DHSS to conduct an evaluation of the pilot project, as well as the percentage-of-income standard described above.

D. Mandatory Income Withholding Under 1985 Wisconsin Act 29

Wisconsin Act 29 created new statutory provisions under s. 767.265, Stats., which require support to be automatically withheld from a payer's income. These changes will become effective with the enactment of the 1987-89 Biennial Budget. Under the new law, upon entry of an order for child support, maintenance, family support or support by a spouse, and upon approval of each stipulation for child support, an assignment will immediately go into effect and the support will automatically be withheld from any payments which the payer would normally receive, usually from an employer. However, if the court determines that income withholding is likely to cause the payer irreparable harm, it can decide not to require withholding to become effective immediately. If the withholding is not effective immediately and the payer fails to make a support payment within 10 days, the court is required to send notice to the payer that an assignment will go into effect 10 days later. The payer, within that 10-day period, may request a hearing to establish that the assignment is not proper because of a mistake in fact.

If the court determines that the assignment should go into effect, the employer of the payer will be notified. The employer must send the required amount to the clerk of courts or, if the amount is for health care payments, to the appropriate health care insurer, provider or plan. The assignment for support takes priority over any other assignment, garnishment or similar legal proceedings. The employer may retain a $1 fee from the wages the employe would otherwise receive for each payment the employer makes, except that no fee may be withheld when benefits under Unemployment Compensation are withheld. If the clerk of courts does not receive the money from the employer, the court is required to provide notice of the assignment to any other person from whom the payer receives or will receive money.

If an employer fails to comply with the assignment requirements, he or she may be fined not more than $200 for each payment not withheld and may be required to pay to the clerk of courts the amount assigned. If the employer fails to notify the clerk of courts within 10 days of an employe's temporary absence or permanent termination, the employer may be fined not more than $200. Also, an employer who denies employment to any person or discharges or disciplines an employe because of income withholding may be fined not more than $200 and may be required to make full restitution to the person, including reinstatement and back pay.

PART IV. ENFORCEMENT OF SUPPORT ORDERS

There are a number of statutory mechanisms, discussed below, available to a court to enforce child support orders, including: (a) preventive measures; (b) civil remedies; (c) criminal actions; and (d) the Revised Uniform Reciprocal Enforcement of Support Act.

A. Preventive Measures

The courts are authorized, under s. 767.30 (1), Stats., to require payment of child support or other family or spousal support in the amounts and at the times the court considers expedient. The specific statutes used to guarantee that the payments are forthcoming include the following:

1. Income Assignments

Income assignments under s. 767.265, Stats., are available to a court to assure that child support payments are made promptly and in full. See the discussion in Part III.

2. Trusts

Under s. 767.25 (2), Stats., in setting child support, a court may protect and promote the best interests of the minor children by setting aside a portion of the support award in a separate fund or trust for the support, education and welfare of the children.

3. Charge Against Real Estate or Requirement of Security

Section 767.30 (2), Stats., permits the court to impose liability for child support payments owed as a charge upon real estate held by the payer or to require the payer to give sufficient security for payment. Section 767.30 (3) provides that, if the person fails to make a payment or to give security, the court may, by any appropriate remedy, enforce the judgment or the order as if it were a final money judgment under the Civil Code, including any payment past due and interest.

B. Civil Remedies

1. Contempt Proceeding

Section 767.305, Stats., allows contempt proceedings under ch. 785, Stats., to be used for child support enforcement.

Section 767.305 provides that the court may issue an order requiring the payer to show cause why he or she should not be punished for contempt if a person: (a) has incurred a child support, maintenance or family support obligation; and (b) has failed to satisfy that obligation and if an income assignment proceeding under s. 767.265 is inapplicable, impractical or unfeasible (for instance, in the case of an unemployed person). If the party who is to receive support applies for the order to show cause why he or she should not be punished for contempt, the court is required under s. 767.305 to issue the order.

Contempt of court is defined, in part, in s. 785.01 (1) (b), Stats., as: "Disobedience, resistance or obstruction of the authority, process or order of a court." A person who is aggrieved by the payer's failure to pay support may file a motion under s. 785.03 (1) (a) for a remedial sanction for the contempt. In a child support contempt action, a court may impose one or more of the following remedial sanctions specified in s. 785.04 (1):

a. Payment of a sum of money sufficient to compensate a party for loss or injury suffered as the result of the contempt;

b. Imprisonment, which may extend only so long as the person is committing the contempt, or for six months, whichever is shorter;

c. A forfeiture not to exceed $2,000 for each day the contempt continues;

d. An order designed to ensure compliance with a prior order of the court; or

e. Another sanction, if the court finds that the other sanctions would be ineffectual to terminate a continuing contempt of court.

{In addition to these remedial sanctions, s. 785.03 (1) (b), Stats., provides for imposition of a punitive sanction, which is described in Section C, below.}

2. Other Civil Remedies

In addition to income assignments and contempt proceedings, other civil remedies are available under s. 767.30 (3), Stats. These remedies include, but are not limited to:

a. Execution of the order or judgment under ch. 815, Stats. Execution is a procedure by which property of a debtor, in this case the child support debtor, is seized and subsequently sold, with the proceeds applied against the child support debt.

b. Contempt of court under ch. 785, which is described in Section B, 1, above.

c. Money judgment for past due payments and interest. A money judgment is a device to fix the amount of the child support arrearage, thereby preventing retroactive modification of the support order in another jurisdiction.

d. Satisfaction under s. 811.23 of any property attached under ch. 811. Attachment is an action whereby property of a debtor, such as a child support debtor, can be seized and held when there is reason to believe that the debtor or the property, or both, may become unavailable in the future (such as by leaving the state). Following attachment, and judgment in the underlying action, the seized property may be sold to satisfy the judgment.

e. Garnishment of wages or salary under ch. 812. Wage garnishment differs from income assignment in two respects: first, in income assignment actions, the employer need not be a party to the action, as required in garnishments; second, unlike garnishment, income assignment laws do not necessitate court action each time a payment is overdue, because assignment is made of future earnings for payment of future support obligations.

C. Criminal Sanctions

The criminal sanctions for failure to support a spouse or child, as revised by 1985 Wisconsin Act 29, are described below.

1. Failure to Support

A person who intentionally fails for less than 120 consecutive days to provide spousal or child support is guilty of a Class A misdemeanor. That offense is punishable by a fine of not more than $10,000 or imprisonment of not more than nine months, or both {s. 940.21 (2), Stats.}. A parent who intentionally fails to provide spousal or child support for 120 or more consecutive days is guilty of a Class E felony and may be fined no more than $10,000 or imprisoned for up to two years, or both {s. 940.21 (1), Stats.}.

Under the new law, the following constitute prima facie evidence of intentional failure to provide support: (a) failure by a person to provide support which is required by court order; or (b) failure of a person not subject to a court order to provide support at least at the AFDC payment level or to cause a spouse or child to become dependent on general relief. The fact that support for a child or spouse is provided

in whole or in part by another person may not be used as a defense for failure to provide support. A person accused of failure to support may claim the inability to provide support as a defense, but not if the person is employable and fails to seek employment, terminates employment or reduces his or her earnings or assets without a reasonable excuse {s. 940.27, Stats.}.

2. Criminal Contempt

In addition to the remedial sanctions for contempt of court under s. 785.04 (1), Stats., there is a criminal procedure under s. 785.03 (1) (b), Stats., which permits a district attorney or other official to seek imposition of a punitive sanction for each separate contempt of court which may be a fine of not more than $5,000 or imprisonment in the county jail for not more than one year, or both. This provision is utilized far less frequently in the child support enforcement area than are the remedial sanctions described above.

D. Revised Uniform Reciprocal Enforcement of Support Act

In 1950, the National Conference of Commissioners on Uniform State Laws adopted the original Uniform Reciprocal Enforcement of Support Act (URESA). The URESA was adopted in all of the states and several territories by 1955 and has been the major focus of interstate enforcement of child support judgments. The URESA was amended in 1958 and, in 1968, it became the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). Wisconsin adopted the RURESA in 1968.

The RURESA, contained in s. 767.65, Stats., is a jurisdictional statute which provides a process for a Wisconsin court to take jurisdiction over a child support case in which the person owing support resides in a foreign (out-of-state) jurisdiction. Section 767.65 (1) states that the purposes of the law are to improve and extend by reciprocal legislation the enforcement of duties of support.

The RURESA provides the opportunity for a parent, who has child support owed to him or her in one state, to sue an absent parent who has moved to another state for that support. The parent to whom support is owed files a petition in his or her home state (called the initiating state), and the court of the state in which the absent parent lives (the responding state) dockets the petition and notifies the local prosecutor who serves notice on the absent parent. The support case is then carried on between the two courts, with the final judgment made by the responding court. The goal of the RURESA is uniform enforcement across state lines. However, because some states have adopted amendments to the law or have

dropped certain sections, it is not always possible to utilize the RURESA in collecting child support from a person in another jurisdiction.

A related mechanism for enforcing support orders in a foreign jurisdiction is through registration of foreign judgments. This is a procedure whereby a judgment is entered for child support in one state which affects a person living in another state. The court, in the second state, honors the judgment, as though it came from its own court, by registering and enforcing the foreign judgment. With reciprocal registration and enforcement of foreign judgments, a parent with an existing child support order can have that order enforced in the other state without further hearing.

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